

Appellant-respondent Roger D. Edwards appeals the trial court's order distributing the marital estate of Roger and his ex-wife, appellee-petitioner Mary L. Edwards. Roger argues that the trial court erroneously set off to Mary \$50,000, which she brought to the marriage and used to make a down payment on the parties' first home. Finding no error, we affirm the judgment of the trial court.

FACTS

The facts, as described by this court in the parties' first appeal, are as follows:

In October 1994, Mary received a \$70,000 settlement from a prior divorce and deposited the funds into a joint account she held with Roger. On November 25, 1994, Roger and Mary purchased a house together for \$120,000. The \$48,000 down payment for the house came from the joint account. They married on February 24, 1995. In September 1997, Roger and Mary sold the house for \$164,900 and, with the proceeds, purchased a house for \$125,500. The down payment on this house was \$80,000. Mary filed a dissolution petition in August 2004, and the divorce was final on November 4, 2005.

Edwards v. Edwards, No. 46A05-0607-CV-00367, slip op. at 1 (Ind. Ct. App. Jan. 31, 2007).

Mary and Roger divided their checking and savings accounts equally between them, and on November 7, 2005, the trial court determined that the remaining marital assets totaled \$136,554, including \$98,800 of equity in the marital home. It credited Mary \$48,946 for the 1994 down payment on their first home and then divided the remaining marital assets equally. To equalize the division of property, the trial court entered a judgment in favor of Roger and against Mary in the amount of \$33,089, directing Mary to refinance or sell the marital home to satisfy the judgment.

Roger appealed and a panel of this court reversed, finding in pertinent part as follows:

Roger sought an equal division of the assets, including the equity in the house. Mary requested the trial court “give [her] a credit for the \$50,000 down payment for the prior residence and then split the remaining equity in the house[.]” (Tr. at 14-15.) Accordingly, Mary was required to rebut the presumption an equal division of assets would be just and reasonable.

Since their relationship began, Mary and Roger “put [their] money in bank accounts together [and] paid for things out of the same bank accounts.” (Id. at 39.) One month after Mary deposited \$70,000 from the settlement of her first divorce into their joint account, they used \$48,946 from the joint account to purchase the couple’s first home prior to their marriage. Both parties worked on improvements to the first house. The proceeds from the sale of their first house were used as a down payment to purchase their second house. Of that down payment, Mary stated, “Fifty was from the previous marriage, and the remainder was from the profit we made off the [first] house.” (Id. at 11.) The second house was refinanced at least once and an addition to the second house was funded by money the couple “borrowed together [and] still owe together.” (Id. at 43.)

The trial court’s order stated: “Before dividing the marital estate, [Mary] should have set over to her the rather substantial cash she brought with her to her second marriage and which she used as a down payment for the initial marital residence.” (App. at 160 .) There was no finding by the trial court that “an equal division of assets would not be just and reasonable.” Ind. Code § 31-15-7-5. While the order following Roger’s motion to correct error explains the trial court was attempting to take into account Mary’s “contribution to assets prior to a marriage and during the period of co-habitation,” (App. at 172), the court may not take that contribution into account unless it first determines “an equal division of assets would not be just and reasonable.” Ind. Code § 31-15-7-5.

Therefore, we must reverse the court’s division of assets and remand for the trial court to either follow the statutory presumption or set forth findings supporting a deviation from the presumption that an equal division is just and reasonable. See Chase v. Chase, 690 N.E.2d 753, 756 (Ind. Ct. App. 1998).

Id. at 3.

On remand, the trial court issued a new property distribution order on May 18, 2007, which includes the following relevant findings and conclusions:

2. The Trial Court is well aware that the aim in a dissolution proceeding is not to restore the parties to their respective economic positions immediately prior to the marriage. The Court must divide the marital estate in accordance with the statutory . . . guidelines.

3. In this instance, the wife purchased the initial marital home with her current husband, prior to their marriage, on November 25, 1994. This occurred approximately three months prior to the date of their marriage. The cost of the home was \$120,000.00 with a \$50,000.00 down payment. This down payment came from a \$70,000.00 divorce settlement previously received by the wife. This home was sold and the current home was purchased in 1997 for a purchase price of \$127,500.00 and with a \$47,500.00 mortgage. They paid \$80,000.00 down. The home was refinanced on January 25, 2003, when they added a garage and room addition.

4. At the time of the dissolution proceedings, the net equity in the marital estate was \$98,800.00.

5. While the home was purchased prior to the party's [sic] marriage, Chestnut v. Chestnut, 499 N.E.2d 783 (Ind. Ct. App. 1986),] applies and the home is still a marital asset. However, it was not acquired by inheritance or gift. At the time of the parties' separation their economic circumstances were approximately the same. Both had pensions and both had an interest in the marital estate.

6. During the parties' marriage they maintained joint accounts and joint debts. During the marriage, no one party can be charged with either the accretion or dissipation of the property. And, the earning abilities of the parties at the time of separation are essentially the same.

7. The husband places great reliance on the cases of Eye v. Eye 849 N.E.2d 698 ([Ind. Ct. App.]2006) and Hatten v. Hatten 825 N.E.2d 791 ([Ind. Ct. App.]2005). Both of these cases involve either gifted and/or inherited property which is not the same issue presented to the Court now. In this instance the wife contributed a portion of her marital settlement from a prior dissolution action which represents money both she and her former husband earned and consolidated during their

marriage. It did not come to the wife as gifted or inherited property or “manna” from heaven.

8. The Court understands that traceability of assets should not be the sole basis for a deviation from a presumptive equal division. However, in this instance, the Court finds that the wife’s contribution of approximately \$50,000.00 for the down payment on the initial marital home was the sine qua non of the accretion of their monies over the last ten years which nearly doubled the wife’s initial contribution. Accordingly, the Court finds that an unequal division of marital property is merited in this instance by virtue of this contribution and again confirms its [a]ward of a judgment against the wife and in favor of the husband in the amount of \$33,089.00.

Appellant’s App. p. 210-11. Roger now appeals.

DISCUSSION AND DECISION

The disposition of marital assets is within the trial court’s sound discretion. When a party challenges the trial court’s division of marital property, he must overcome a strong presumption that the court considered and complied with the applicable statute. That presumption is one of the strongest presumptions applicable to our consideration on appeal. Hatten v. Hatten, 825 N.E.2d 791, 794 (Ind. Ct. App. 2005), trans. denied.

When we review a claim that the trial court improperly divided marital property, we must decide whether the trial court abused its discretion, considering only the evidence most favorable to the trial court’s disposition of the property, without reweighing the evidence or assessing the credibility of witnesses. Id. An abuse of discretion occurs if the trial court’s decision is clearly against the logic and effect of the facts and circumstances before it, or if the trial court has misinterpreted the law or disregards evidence of factors listed in the controlling statute. Id. Although the facts and reasonable inferences might allow for a different conclusion, we will not substitute our judgment for that of the trial court. Id.

The trial court must divide the parties' property in a just and reasonable manner, including property owned by either spouse prior to the marriage, acquired by either spouse after the marriage and prior to final separation of the parties, or acquired by their joint efforts. Ind. Code § 31-15-7-4. An equal division of marital property is presumed to be just and reasonable, but

this presumption may be rebutted by a party who presents relevant evidence, including evidence concerning the following factors, that an equal division would not be just and reasonable:

- (1) The contribution of each spouse to the acquisition of the property, regardless of whether the contribution was income producing.
- (2) The extent to which the property was acquired by each spouse:
 - (A) before the marriage; or
 - (B) through inheritance or gift.
- (3) The economic circumstances of each spouse at the time the disposition of the property is to become effective, including the desirability of awarding the family residence or the right to dwell in the family residence for such periods as the court considers just to the spouse having custody of any children.
- (4) The conduct of the parties during the marriage as related to the disposition or dissipation of their property.
- (5) The earnings or earning ability of the parties as related to:
 - (A) a final division of property; and
 - (B) a final determination of the property rights of the parties.

I.C. § 31-15-7-5. When ordering an unequal division, the trial court must consider all of the factors. Eye v. Eye, 849 N.E.2d 698, 701 (Ind. Ct. App. 2006). The trial court's disposition of the marital estate is to be considered as a whole, not item by item. Id.

Here, the parties presented evidence on and the trial court considered all statutory factors. Essentially, the trial court concluded—and the parties do not dispute—that four of the five factors are in equipoise. The remaining factor—the contribution of each spouse to the acquisition of the property—weighs heavily in Mary's favor with respect to the \$50,000 she contributed to the down payment on the house. Indiana Code section 31-15-7-5 does not specify that the trial court must find that a certain number—or even a majority—of the factors must weigh in favor of an unequal division to support such a result. Rather, the statute merely requires that the parties present, and the trial court consider, evidence regarding the specified factors. Thus, the mere fact that the trial court found only one factor to weigh in favor of an unequal distribution does not lead us to conclude that it abused its discretion in doing so. See Beard v. Beard, 758 N.E.2d 1019, 1026 (Ind. Ct. App. 2001) (affirming trial court's 63/37% split of the marital estate in the husband's favor where the majority of the marital assets were owned by him prior to the marriage because the trial court was justified in considering the extent to which the property was acquired by each spouse before the marriage).

Roger emphasizes that the funds were commingled and treated as joint property during the parties' marriage. Indeed, the undisputed evidence establishes that the parties did, in fact, treat these funds as joint property during their marriage. The trial court would have

been entitled, based on this fact, to split the funds equally between Roger and Mary. But given the fact that the trial court is statutorily authorized to consider each spouse's contribution to the acquisition of the property, it was equally entitled to award the \$50,000, which is readily attributable to Mary's initial contribution, to her, and we do not find that it abused its discretion in choosing to do so.

We also note that Mary brought \$70,000 into the marriage but the trial court awarded her only a portion of those funds. It is apparent, therefore, that the trial court carefully considered the parties' relationship and history in arriving at its conclusion that Mary's provision of \$50,000 "was the sine qua non of the accretion of their monies over the last ten years which nearly doubled the wife's initial contribution." Appellant's App. p. 211. In the end, the trial court concluded that it was just and reasonable to deviate from an equal division of the marital estate. Under these circumstances, we find that the resulting division of property is not clearly against the logic and effect of the facts and circumstances before the court and that the trial court did not abuse its broad discretion in crediting Mary for the \$50,000 down payment and dividing the remaining marital estate equally.

The judgment of the trial court is affirmed.

BAILEY, J., concurs.

VAIDIK, J., concurs in result.